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PAUL DUDLEY: HERITAGE, OBSERVATION, AND CONSCIENCE

*Steve Sheppard**

Introduction

Paul Dudley, F.R.S., eighth chief justice of the Superior Court of Judicature for the Province of Massachusetts Bay, was a savant of eighteenth-century America. In a career spanning nearly fifty years of public service, Dudley was, of course, a prominent lawyer and jurist. Perhaps more importantly, though, his contributions as a thoughtful legislator and as colonial representative to native tribes, his support for charitable institutions, his wide-ranging interest in natural science, and even his strong Puritan philosophy mark him as an archetype of the English colonist in America.

Heritage

Paul Dudley was born in Roxbury, Massachusetts, on September 3, 1675, the fourth son of Joseph Dudley, the head of a well established dynasty. Thomas Dudley, Paul's grandfather, had emigrated to America in 1630 on the same ship that brought John Winthrop.

Thomas Dudley, having already served in England as the steward of the Earl of Lincoln's estates, was well read and a man of some substance among the colonists.¹ A captain in Elizabeth I's army, he was appointed major-general of colonial troops. Along with John Winthrop and Henry Vane, he was elected, if temporarily, a member for life of the Court of Assistants (the executive council of the colony under the Charter of 1629).

Thomas Dudley was elected deputy governor thirteen times between 1629 and 1650 and governor in 1634, 1640, 1645, and 1650. Thomas was an original resident and founder of New Towne, which would later become Cambridge, Massachusetts,

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1. See COTTON MATHER[ATTRIB.] *THE LIFE OF MR. THOMAS DUDLEY, SEVERAL TIMES GOVERNOR OF THE COLONY OF MASSACHUSETTS* (Charles Dean, ed.) (Cambridge, John Wilson & Son 1870). See also the somewhat laudatory biography AUGUSTINE JONES, *THE LIFE AND WORK OF THOMAS DUDLEY, THE SECOND GOVERNOR OF MASSACHUSETTS* (Boston, Houghton Mifflin and Co. 1899).

and he strongly promoted a plan to found a college there, one indeed that Paul Dudley would later attend. Thomas decided, however, to relocate to Roxbury, where he established a family seat.²

Thomas Dudley had converted to Puritanism shortly after his marriage in England, and he carried out his colonial offices with the convert's zeal, giving rise to recurrent battles with Governor Winthrop over the role of the government in punishing heresy.³ Dudley's views represented the chief civil reflection of the harsh aspects of Puritan Massachusetts Bay, views that led not only to the 1636 banishment of Roger Williams, who fled to Narragansett Bay, founding the town of Providence and the colony of Rhode Island, but also, later, to infamous trials for heresy and witchcraft.⁴

Thomas Dudley died in 1653 at the age of 77, leaving his political mantle to be taken up by his son, Joseph Dudley. Joseph had been born in Roxbury in 1647, studied theology at Harvard, and became both a magistrate and member of the General Court, or colonial house of representatives, in 1673.⁵ While still in his twenties, Joseph both fought the Narragansett Indians in a colonial war and served as a commissioner negotiating a peace treaty with them. He went to England as the colonial agent to negotiate the terms of a renewed charter and returned in 1685 as James II's appointed President of New England, which included Massachusetts Bay, Plymouth Colony, New Hampshire, the territory of Maine, and the King's Province of Narragansett.⁶

2. See CHARLES M. ELLIS, *THE HISTORY OF ROXBURY TOWN* (Boston, S.G. Drake, 1848); FRANCIS S. DRAKE, *THE TOWN OF ROXBURY 236-237* (Roxbury, published by the author, 1878) (hereinafter, DRAKE, ROXBURY).

3. See Stephen Foster, *New England and the Challenge of Heresy, 1630 to 1660: The Puritan Crisis in Transatlantic Perspective*, 38 WM. & MARY Q. 624 (3rd. Ser., 1981). For the development of the law and the evolving nature of the legal effects of Puritanism during this period see DAVID THOMAS KONIG, *LAW AND SOCIETY IN PURITAN MASSACHUSETTS, ESSEX COUNTY, 1629-1692* (1979). For the relationship between arguments of political nature and God, which are easily confused in this period but affected the law differently, see generally HOWARD SCHWEBER, *NEW ENGLAND'S GLORY AND DESIGN: POLITICAL AND NATURAL PHILOSOPHY IN MASSACHUSETTS PURITANISM* (forthcoming in 2001) and —, *The Ordering Principle: The Adjudication of Criminal Cases in Massachusetts Courts 1629-1650*, 32 L. & SOC. REV. (1998).

4. For one view of Dudley's sometimes combative religious governance, see JOHN WINTHROP, *THE HISTORY OF NEW ENGLAND FROM 1630 TO 1649: BY JOHN WINTHROP, ESQ., FIRST GOVERNOUR OF THE COLONY OF THE MASSACHUSETTS BAY FROM HIS ORIGINAL MANUSCRIPTS WITH NOTES* (John Savage, ed. 1996).

5. See generally EVERETT KIMBALL, *THE PUBLIC LIFE OF JOSEPH DUDLEY: A STUDY OF THE COLONIAL POLICY OF THE STUARTS IN NEW ENGLAND, 1660-1715* (1911). For the interplay of judicial and legislative functions between the magistrates, General Court, and the Court of Assistants under the Charter, see Barbara A. Black, *The Concept of a Supreme Court: Massachusetts Bay 1630-1686*, in RUSSELL K. OSGOOD, *THE HISTORY OF THE LAW IN MASSACHUSETTS: THE SUPREME JUDICIAL COURT 1692-1992* (1992).

6. William Andrew Polf, *Puritan Gentlemen: The Dudleys of Massachusetts, 1576-1686* (1973) (unpublished PhD. dissertation, Syracuse University) (on file with Syracuse University Library).

Joseph's fortunes waxed and waned for the next decade and a half. In 1686, James II appointed Edmund Andros governor of the Dominion of New England (including all of the New England colonies and later New York and New Jersey). In 1687, Joseph Dudley was made head of Andros's council and chief justice of the Superior Court of the Dominion, earning great popular displeasure by enforcing Andros's increasingly tyrannical laws and severely limiting the rights of colonists, which they claimed under Magna Carta. In the Revolution of 1689 (the colonial revolt in the wake of the Glorious Revolution in England), Dudley was deposed along with Andros and imprisoned for seven months before being released to travel to England. Dudley's stock in London remained high though, and he was, successively, deputy governor of West New Jersey, chief justice of New York, governor of the Isles of Jersey, lieutenant governor of the Isle of Wight, and Member of Commons from Wight.⁷

Throughout these years, Joseph seems to have single-mindedly pursued one appointment, which he finally received in 1701, being made "Governor of Massachusetts Bay, New Hampshire, Rhode Island, Providence Plantation & the Narragansett Country or Kings Province in America." He remained governor until 1715, consolidating the power of the Crown in the colony by concentrating authority in the governorship, distancing himself from the established Puritan clergy, and mounting several military expeditions against the native tribes and against French Canada. These maneuvers, however, led to a continuing debt, which resulted in political division between those who preferred a private bank and those who (with Dudley) favored colonial bills of credit as a means of finance.⁸

**Joseph
Dudley.**
Unknown
artist, ca.
1682-1686.



Courtesy
of the
Massachu-
setts
Historical
Society.

7. See 2 JOHN LANGDON SIBLEY, *BIOGRAPHICAL SKETCHES OF THOSE WHO ATTENDED HARVARD COLLEGE 166-188* (1933) (hereinafter, SIBLEY, *HARVARD GRADUATES* [note later volumes were authored by Clifford K. Shipton]). Dudley's patrons at court were William Blathwayt, clerk of the Privy Council, and Lord Cutts, who was himself the governor of the Isle of Wight. See RICHARD L. BUSHMAN, *KING AND PEOPLE IN PROVINCIAL MASSACHUSETTS* 64-67 (1985).

8. See EVERETT KIMBALL, *THE PUBLIC LIFE OF JOSEPH DUDLEY: A STUDY OF THE COLONIAL POLITY OF THE STUARTS IN NEW ENGLAND, 1660-1715* (1911) (hereinafter, KIMBLE, *JOSEPH DUDLEY*). For a chronicle of Dudley's government focusing on its weakening of the Puritan state, see PHILIP RANLET, *ENEMIES OF THE BAY COLONY* (1995).

If such policies were “too high for the Massachusetts people” for him to remain popular among them,⁹ Dudley’s position was dependent on support from London, not Boston. Dudley lost favor at court, however, with the death of Queen Anne in 1714, and he retired to Roxbury the following year. He died in 1720, leaving the bulk of his estate to Paul and having seen his sons both ascend to positions of considerable influence in the colony and carry on his commitments in colonial policy.¹⁰

Young Paul Dudley

Paul Dudley was born in Roxbury on September 3, 1675, the fourth child of Joseph Dudley, who was then barely embarked on his public career. Dudley was sent to the local grammar school, of which both his father and grandfather had been benefactors.¹¹ He did sufficiently well there to inspire his father to write the Reverend Increase Mather, then Acting President of the nearby Harvard College, asking that Paul be considered for matriculation at the ripe age of ten years:

I have humbly to offer you a little sober and well disposed son, who though very yong, if he may have the favour of admittance, I hope his learning will be tolerable; and for him I will promise that by your and my care, his own Industry, and the blessing of God, his Mother, the Vniversity shall not be ashamed to allow him the place of a son at seaven years end. I pray you will please to appoynt him a time when he may wayt on you to be examined, which his Brother Thomas may prepare him for.¹²

Young Paul was admitted, made a Scholar of the House, and placed at the head of the class. Paul’s accommodation has been described as “probably not unrelated to the need of placating his powerful father” and helping the College to sup from the bowls

9. 2 THOMAS HUTCHINSON, *THE HISTORY OF THE PROVINCE OF MASSACHUSETTS-BAY FROM THE CHARTER OF KING WILLIAM AND MARY, IN 1691, UNTIL THE YEAR 1750*, 111 (1936).

10. See “Last Will & Testament of Joseph Dudley of Roxbury, Esq.,” reprinted in KIMBALL, JOSEPH DUDLEY, *supra* note 8, at 201-203.

11. See entries in C.K. DILLAWAY, *A HISTORY OF THE GRAMMAR SCHOOL OF “THE FREE SCHOOLE OF 1645, IN ROXBURIE” WITH BIOGRAPHICAL SKETCHES OF THE MEMBERS OF THE FIRST CHURCH, AND OTHER TRUSTEES (Roxbury, John Backup, 1860)* (hereinafter, DILLAWAY, *GRAMMAR SCHOOL IN ROXBURY*).

12. Mather Papers, 8 MASSACHUSETTS HISTORICAL SOCIETY, *COLLECTIONS* (4th series) 484 (1868). Joseph Dudley’s letter may be the most often quoted vignette of Paul’s life. See 4 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 43 (1885); John T. Hassam, *Registers of Probate for the County of Suffolk, 1639-1799*, 16 MASSACHUSETTS HISTORICAL SOCIETY, *PROCEEDINGS* (2nd series) 23, 25 (1902) (hereinafter Hassam).

of the Dominion treasury.¹³ Such a view must be moderated, however, by three considerations. First, Joseph Dudley would have had a considerable care for his reputation, which would not have been furthered by asking for an unwarranted privilege in such a public light. Moreover, at the time of Paul's matriculation, Dudley was wealthy and well established but by no means the man of influence he would later become. Lastly, one might consider young Paul's merits in the light of his later success as a student, both at Harvard and in London.

Indeed Paul was a good student. He concluded his first degree in four years, being made a Bachelor of Arts in 1690 at the age of fourteen. He is quite possibly the youngest graduate of the early centuries of Harvard College.¹⁴ He remained in college as a scholar, which provided an annual stipend of £ 4 or 5, and the obligation to maintain "a strict account of all the Buildings, Chambers, Studyes and fences belonging to the Colledge."¹⁵ He completed his Master of Arts in 1693, defending the proposition, "Before the Last Day of Judgment there will be a Blessed millenium."¹⁶

He is thought to have studied law in the province for several years. In any event, in 1697, Paul's father, then in England, wrote for him to come to London to study the law. This invitation, made to the fourth son, might be strictly a testament to Paul's scholastic ability. More likely Joseph Dudley was prompted to the invitation by the loss of his first son, Thomas, and another son, who had drowned at sea.¹⁷ Within the same time, Joseph wrote to his wife to give permission for Paul to join him and

13. 4 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 43, citing Mather Papers, 8 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (4th series) 656 (1868).

14. John Sibley, in his exhaustive history, notes in his comments on Cotton Mather, who was graduated in 1678 at the age of sixteen: "I recollect only two alumni of Harvard University who were younger when they graduated than Cotton Mather. Paul Dudley . . . was fourteen when he took his first degree, 2 July 1690, and Andrew Preston Peabody, D.D., LL.D., . . . was fifteen when he graduated, 31 August, 1826." 3 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 6.

15. Harvard College Records, 15 & 16 COLONIAL SOCIETY OF MASSACHUSETTS, COLLECTIONS 48, 204 (duties), 828 831, 339 (appointments) (1975). *See also* 6 EDWARD RANDOLPH 29, 244, 245 (Prince Society, 1898-1909), cited in 4 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 43.

16. More specifically, he argued in the affirmative the question, "An ante Ultimam Diem Judicii fuerit Beatum millenum?"

17. Samuel Sewall mentions visiting Madam Dudley on June 28, 1697, when he "consol'd her loss of her sons." 1 SAMUEL SEWALL, *THE DIARY OF SAMUEL SEWALL, 1674-1729*, at 37 (M. H. Thomas ed. 1973) (hereinafter, SEWALL, *DIARY*). Sibley relies on other sources to determine that Sewall's diary entry refers to the death of Thomas, Joseph's first son and Paul's one-time tutor. 4 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 318. The other brother may have been either Edward or Joseph, or perhaps both of the brothers born before Paul, although a tragedy of such a scale would, one hopes, have been better recorded. Dean Dudley lists all three, Thomas, Edward, and Joseph, as either "probably died soon" or "died young." Dean Dudley, *Pedigree of Dudley*, 10 *New England Historical and Genealogical Record* 130 (1856). *See also* DEAN DUDLEY, *THE HISTORY OF THE DUDLEY FAMILY, CONTAINING THE GENEALOGY OF EACH BRANCH IN VARIOUS COUNTRIES* (Wakefield, Mass., The Author, 1894).

study law, if there was no better purpose to employ him.

“If Paul bee coming toward mee, he shall be welcom; if otherwise you have disposed him at the Coledge and he have a fellowship there, I will be content, though I know not whether an employment that way will be so agreeable as the law might be. Let him take care of your affayres at home, especially referring to your orchards.”¹⁸

Paul leapt at the chance to leave for England. He quickly took ship,¹⁹ apparently traveling through Spain en route to London.²⁰ By autumn, he had commenced study in the Middle Temple,²¹ once again following in the footsteps of his brother Thomas.²² In due course, Paul was called to the bar and returned to New England.

Despite Paul’s frugality as a student,²³ his father’s continued absence of fortune pressured the family finances,²⁴ which were apparently only relieved with Joseph’s appointment as gover-

18. Letter from Joseph Dudley to Rebecca Dudley, June 24, 1697, in Winthrop Papers (Part 5), 3 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (6th series) 515-516 (1889).

19. The First Church of Roxbury provided a letter of recommendation, dated June 24, 1697, to Dudley, who was “purposing, by the will of God, a Voyage into England.” 1 RECORDS OF THE FIRST CHURCH, CAMBRIDGE 23 (1906).

20. In his later pamphlet, *Essay on the Merchandise of Slaves and Souls of Men*, Dudley mentions being in Coruna, Spain in 1697, where he saw over a hundred pilgrims moved by a dubious Papist theology to travel hundreds of miles in search of Catholic salvation. The significance of this reference to Dudley’s biography is apparently first described by Hassam, *supra* note 12, at 26 n. 2. See also note 125, *infra*.

21. The Admissions Register of Middle Temple notes that Paul Dudley, son and heir of Joseph Dudley of the Isle of Wight, was admitted on 10 November 1697, and called of Grace on 22 November 1700. Cf. 5 Winthrop Papers, *supra* note 18, at 519. Sibley, probably following the statement of Stephen Sewall, incorrectly describes Dudley as a student in the Inner Temple. See 4 SIBLEY, HARVARD GRADUATES, *supra* note 7, at 43. Stephen Sewall’s obituary of Dudley is discussed below.

22. Thomas was such a perfect swot that the chief judge, after reviewing the students’ notebooks, ordered the other students to notice Thomas’s work as “the best account of all the pleadings in the causes.” Letter of Jonathan Belcher to Jonathan Belcher, Jr., November 11, 1731, Belcher Papers (Part 1), 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 49, 51 (1893); Letter of October 1, 1734, Belcher Papers (Part 2), 7 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS, (6th series) 121, 124 (1894). Thomas’s example was held up to young Paul Dudley by his father as well. “Your brother was here but three yeares and wanted neither learning nor repute when he returned.” Letter of Joseph Dudley to Paul Dudley, December 23, 1700, Winthrop Papers (Part 5), 3 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 519-520 (1889).

23. Governor Belcher complained later to his son, Jonathan, Jr., about his extravagance as a Temple student by comparing him to his colleagues, “Judge Lynde & Judge Dudley tell me they never exceeded £120 str in one year while at the Temple, & Mr Dudley was a Govr’s eldest son.” Belcher Papers (Part 1), 6 Massachusetts Historical Society Collections (6th series) 85, 185, 263 (1894).

24. See Letter of Joseph Dudley to Paul Dudley, December 23, 1700, Winthrop Papers (Part 5), 3 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 519-520 (1889).

nor in 1702. Upon his appointment as Captain General and Governor in Chief, Joseph secured Paul's appointment as the province's attorney general by a commission from Queen Anne.²⁵ He wrote to the Earl of Nottingham,

[A]s I was commanded to nominate an Attorney General, I Humbly offer Mr. Paul Dudley, the only Barrister at Law here who had his education in the Temple, and at present manages the business to the acceptance of everybody that loves the Government of *England*. There is no salary nor fees depending, nor like to be obtained till I can settle the support of the Government, but if he may obtain your Lordship's favour for a warrant, he is my son and I shall freely answer his management here for the Queen's service.²⁶

The warrant was granted, but controversy swelled over the authority under which Dudley was attorney general, the provincial General Court claiming the right to elect holders to the post.

Attorney General

Joseph Dudley returned to Boston on June 11, 1702, with Paul's warrant from Queen Anne in hand. Rather than rely on the Royal warrant, however, the governor personally appointed Paul to the office, with the consent of the council. The House of Representatives resolved the dispute when it independently appointed Paul to the position in 1716.²⁷

As well as serving as attorney general, 1702 saw Paul Dudley's appointment as Justice of the Peace²⁸ and as Register of Wills and Administration for Suffolk County, Massachusetts.²⁹ Multiple appointments were not uncommon at the time, and Paul had the benefit not only of his father's patronage but also his status as one of the few trained lawyers in the province.

Having returned home to an apparently secure career, the twenty-eight-year-old Paul was prepared to begin his own family. He courted Lucy Wainwright, the daughter of Colonel John

25. The commission is dated April 22, 1702. See 12 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (2nd series) 51, 53 (1897-99).

26. Letter of Governor Joseph Dudley to the Earl of Nottingham, CALENDAR OF STATE PAPERS, COLONIAL SERIES, AMERICA AND WEST INDIES Jan.-Dec. 1, 1702, at 686-87 (1912).

27. 2 HUTCHINSON, HISTORY, *supra* note 9, at 271.

28. 3 Council Records 339. Dudley would be appointed Justice of the Peace again in 1728, 1731, and 1738; see WILLIAM A. WHITMORE, THE MASSACHUSETTS CIVIL LIST FOR THE COLONIAL AND PROVINCIAL PERIODS 126-29 (Albany, J. Munsell, 1870).

29. 3 Council Records 388.

**Lucy
Wain-
wright
Dudley.
Pierpont
Limner,
ca. 1705.**



**Courtesy
of the
Boston
Ath-
enaeum.**

Wainwright of Ipswich, and they were married on September 15, 1703.³⁰ Although they had six children, none survived childhood.³¹ They initially settled in Boston, where Paul was an active leader in the young town's affairs, serving as a member of a committee to draft a town charter in 1708,³² as Moderator of three town meetings, as a Selectman, and between 1709 and 1711 as a member of committees overseeing numerous matters of public works and development.³³ The Dudleys remained in Boston until Joseph Dudley's death in 1720, when Paul and his wife moved to the family seat in Roxbury.

Paul was an energetic attorney general.³⁴ Besides acting as the province's attorney, he spent part of his early years in office "in egre pursuit of Pirates."³⁵ Joseph Dudley appointed Paul to a three-man commission for seizing pirates and their treasure, along with future allies Nathaniel Byfield and Samuel Sewall. The commission took to its task with bravado, in some cases directing the attack force that rounded up the pirate bands.³⁶ As attorney general, Dudley acted also as prosecutor and attracted quite a reputation from these trials, the most notorious of which was of

Captain John Quelch, a strayed privateer.³⁷ On the other hand, there was also the complaint that the trials (with the inevitable

30. See DRAKE, ROXBURY, *supra* note 2, at 254. A rather charming letter between the young Paul and Lucy's sister is reprinted in Dean Dudley's *History of the Dudley Family*, *supra* note 17, at 528-29.

31. Samuel Sewall noted the burial of their first child, Thomas, on April 26, 1705; he had been born on April 13, 1 SEWALL, DIARY, *supra* note 17, at 522.

32. 8 RECORDS RELATING TO THE EARLY HISTORY OF BOSTON, BOSTON TOWN RECORDS, 1700-1728, 299 (Boston, Rockwell and Churchill, 1882).

33. ROBERT FRANCIS SEYBOLT, THE TOWN OFFICIALS OF COLONIAL BOSTON 1634-1775, at 122, 130-32 (1939). The Boston Town Records list Dudley as Moderator for three meetings as well as serving as a committeeman dealing with seacoast erosion, dock leases, committee agendas, and the conflict of private and public property.

34. For the role of the colonial attorney general, see Abner C. Goodell, *Attorneys General and Solicitors General of Massachusetts*, 10 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (2nd series) 285 (1896).

35. 2 SEWALL, DIARY, *supra* note 17, at 103; Abner C. Goodell, *Captain John Quelch, The Pirate*, 3 COLONIAL SOCIETY OF MASSACHUSETTS, TRANSACTIONS 71 (1898).

36. BOSTON NEWS-LETTER June 12 to June 19, 1704.

37. Samuel Sewall, who was among the judges presiding at Quelch's trial, described it in 1 SEWALL, DIARY, *supra* note 17, at 505-11. See also Goodell, *supra* note 35, at 71.

hangings to follow) were nothing more than judicial murder.³⁸

As a member of his father's administration, Dudley was called on for more active roles than court work alone. Besides chasing pirates, he served on the province's council of war during Queen Anne's War,³⁹ and acted as arbiter for matters of constitutional authority.⁴⁰

One cause of public concern on which Dudley seems to have had influence was the creation of a land bank in 1714.⁴¹ He offered a memorial in the Council against the plan, raising specific concerns not only about its financial structure and reserves but also its political accountability, which led the Council to require the bank's backers to secure permission from the legislature. The bank's promoters, led by Elisha Cooke, the son of an old opponent of Joseph Dudley's, altered the plan in part to account for some of Dudley's objections, but persisted in its defense against his continuing objections.⁴² The bank, of course, offered them the prospect of personal profits, but it also heralded a greater independence for American enterprise from English capital markets. After several months of stormy debate, the Council more or less followed Dudley's plan and increased the money supply, ending the immediate need for and basis of the bank plan. Dudley's opposition is fairly easily characterized as an instance of his loyalty to England at the expense of provincial interests,⁴³ particularly given the view of the Dudley opponents that all of the Dudleys' actions were "the more cunning, though perhaps not the more honest and sincere."⁴⁴ Such a characterization, however, is far from complete and misses Dudley's appar-

38. *Modest Inquiry by a Disinterested Hand*, originally printed in 1707, reprinted in 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (5th series) 65-95 (1879); 3 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 547 (1889); Henry W. Belknap, *The Lambert Family of Salem, Mass.*, 54 ESSEX INSTITUTE HISTORICAL COLLECTIONS 49, 59-61 (1918).

39. See mss. in Massachusetts Historical Society Collections, Massachusetts Archives, 71:666-8; 71-669; 8:20.5

40. See, John Noble, *A Few Notes on Admiralty Jurisdiction in the Colony and in the Province of Massachusetts Bay*, 8 COLONIAL SOCIETY OF MASSACHUSETTS, TRANSACTIONS 150, 158 (1906).

41. The plan, a revival of a plan of the 1680s, Dudley's role in opposition to it, and its demise are chronicled in Andrew McFarland Davis, *Currency Discussion in Massachusetts in the Eighteenth Century*, 11 QUARTERLY JOURNAL OF ECONOMICS 70 (1896). Cf. Herman Belz, *Paper Money in Colonial Massachusetts*, 100 ESSEX INSTITUTE HISTORICAL COLLECTIONS 149 (1964).

42. Paul Dudley, *Objections to the Bank of Credit Lately Projected at Boston. Being a Letter upon that Occasion to John Burril, Esq., Speaker to the House of Representatives for the Province of Massachusetts-Bay, in New England* (Boston, T. Fleet, 1714). The pamphlet has been reprinted in Andrew Davis McFarland, *Colonial Currency Reprints* (4 vols.)(1964).

43. See, e.g., SAMUEL LYNDE, A VINDICATION OF THE BANK OF CREDIT PROJECTED IN BOSTON FROM THE ASPERSIONS OF PAUL DUDLEY, ESQR., IN A LETTER BY HIM DIRECTED BY JOHN BURRIL, ESQ., LATE SPEAKER TO THE HOUSE OF REPRESENTATIVES FOR THE PROVINCE OF THE MASSACHUSETTS-BAY IN NEW ENGLAND (Boston, 1714).

44. Letter of William Douglass to Cadwallader Colden, April 22, 1728, 2 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (4th series) 184 (1854).

ently sincere concern both for the political oversight of the operations and for the economic safety of the colony and the bank's borrowers.⁴⁵

During these years, Dudley continued to engage in private practice, occasionally representing Harvard College, as well as participating in its politics, supporting the Mathers against the liberalizing influence of President Leverett.⁴⁶ Dudley represented other parties in private litigation as well. One of his most influential clients was Nathaniel Byfield, whom he represented in the affair of Blagrove, a contested estate administration, in 1705. Dudley's representation in the affair seems to have been effective, causing both a lower court ruling and a jury verdict in the Superior Court to be overturned by the bench.⁴⁷ Although Dudley was quite in demand as a private attorney in these years,⁴⁸ he may well have contrived at least one case in which he acted as counsel, when he represented his brother-in-law, John Winthrop.⁴⁹

Dudley resigned his office as attorney general on November 22, 1718, and appears to have been succeeded as attorney general by Thomas Newton, a political opponent of the Dudleys, who had sought Governor Dudley's removal in a petition in 1706.⁵⁰

Dudley the Royalist

To be sure, political opposition to the Dudleys, and more objective concerns arising from the appearance of nepotism and a lack of independence, dogged Paul's years as attorney general. His opponents claimed not only that he and his father misused their offices to pursue personal glory and gain but also that they were disloyal to the liberties of colonials. In part this conflict was

45. See Post-Script to Dudley, *Objections*, *supra* note 42, at 32. "When they make a thorow Reform of their [project] so as to be consistent with the Honorable Safety of the Government, the liberties Properties of the People, and agreeable to Resaon, Justice, and Equity, I believe every one will Encourage and give in to it."

46. 4 SIBLEY, *HARVARD GRADUATES*, *supra* note 7, at 48, citing 30 *The Christian Examiner*, 78. Dudley was particularly active in the construction of Harvard's Massachusetts Hall. See William C. Lane, *The Building of Massachusetts Hall, 1718-1720*, 24 *COLONIAL SOCIETY OF MASSACHUSETTS, TRANSACTIONS* 81 (1923).

47. See Barbara Aronstein Black, *Nathaniel Byfield, 1653-1733*, in *LAW IN COLONIAL MASSACHUSETTS 1630-1800*, at 57, 87-88 (Daniel R. Coquillette, ed. 1984).

48. The Massachusetts Historical Society archives in the Massachusetts Archives contains papers of several of Dudley's actions, apparently as a private attorney, in several actions. See *Case of Watts* (1705) (17:152), *English v. Andrew* (1707) (40:897), *Will of J. Cotton* (1707) (45:360); *Case of Robert Sanders* (1712) (8:201). The docket books for this period are only partially extant, and a full inventory of Dudley's work from this period is probably impossible.

49. See Letter of John Winthrop to Cotton Mather, undated, Mather Papers (Part 6), 5 *MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS* (6th series) 423-24. (1892).

50. EMORY WASHBURN, *SKETCHES OF THE JUDICIAL HISTORY OF MASSACHUSETTS* 205-206 (Boston, Little and Brown, 1840).

the inevitable result of a clash between the aristocratic leanings of a wealthy governor (and his son) whose tenure depended on Royal favor and the leveling leanings of Puritans building a new life on the frontier.⁵¹ Certainly, Paul Dudley's monarchical views led to conflict, as well as distrust.⁵²

One of the claims raised against Paul Dudley during his tenure as attorney general, that his prosecutions and executions of the pirates were unjust, we have already seen.⁵³ There were also claims of nepotism that arose strictly from the close relationship in office and kinship between Joseph and his lieutenant. The even-tempered Samuel Sewall thought it "inconvenient" to the province to have the governor's son control cases before the general court, which could only hear cases with the governor's consent. "The Son may be presented with a Fee, as it may become the Father's bribe."⁵⁴ Less circumspect claims of bribery were leveled at both.⁵⁵

The most persistent of these claims, however, was based in a near-treasonous letter alleged to have been written by Paul Dudley to a kinsman in London, in January 1704. The letter claims that:

This Country will never be worth living in, for Lawyers or Gentlemen, till the CHARTER IS TAKEN AWAY. My Father and I sometimes Talk of the Queen's Establishing a COURT OF CHANCERY in this country; I have Writ of it to Mr. Blathwayt; If the Matter should Succeed, you might get some Place worth your Return; of which I should be very Glad.⁵⁶

51. One, perhaps apocryphal, story illustrates this clash nicely. In Drake's history, he relates a meeting between Paul Dudley and a laborer. Dudley was on his way to town and had left a law book at home by mistake. Drake reports that, on asking the laborer to go to fetch it, the laborer replied, "'Can one fetch it, sir?' 'Oh, yes,' said Dudley. 'Then go yourself,' was the reply." DRAKE, ROXBURY, *supra* note 2, at 252.

52. See note 59, *infra*.

53. See note 37, *supra*.

54. Letter of Samuel Sewall to Nathaniel Higginson, August 21, 1706, Samuel Sewall, Letter-Book, 1 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 339 (1886) (hereinafter, Sewall, Letter-Book).

55. See Cotton Mather [attrib.], *A Memorial of the Present Deplorable State of New-England, with the Many Disadvantages it Lyes under by the Maleadministration of Their Present Governour, Joseph Dudley, Esq., and His Son Paul, &c. Together with the Several Affidavits of People of Worth Relating to Several of the Said Governour's Mercenary and Illegal Proceedings but Particularly His Private Treacherous Correspondence with Her Majesty's Enemies the French and Indians. To Which Is Added a Faithful but Melancholy Account of Several Barbarities Lately Committed upon Her Majesty's Subjects by the Said French and Indians in the East and West Parts of New-England.* (London, printed by Benjamin Harris, 1708), reprinted in 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (5th series) 31 (1879) (hereinafter, Mather, *Present Deplorable State*).

56. Henry Ashurst [attrib.], *The Deplorable State of New England, by Reason of a Covetous*

These were-impolitic statements, to say the least, which served as the basis for complaints by the Mathers and others not only that Paul and his father sought to reduce the liberties of the colonists, but also that they intended to establish "a court of bribery." In 1708 the letter was reproduced and distributed in a pamphlet printed in London, describing Paul Dudley as "the great Instrument" of Governor Joseph Dudley's "Oppressions."⁵⁷ Although the pamphlet seems to have been written by one of the Mathers' colleagues, the Mathers participated more directly in the campaign to discredit the Dudleys for their Royalist leanings.⁵⁸ While the Dudleys certainly held monarchical sentiments, the policies of consolidation of colonial management and governance were defensible, even if they did serve to diminish the authority of local church leaders and ultimately the authority of the provincial Council itself.⁵⁹ There is also a certain mystery as to whether Paul actually wrote the letter that served as his indictment. The original seems to have been the object of considerable search, even as late as 1740, without success, and there are inconsistencies that suggest it could as easily have been written by the Dudleys' enemies.⁶⁰

In sum, Governor Dudley grew tremendously unpopular as he consolidated power under the charter. As a royal appointee

and Treacherous Governour and Pusillanimous Counsellors with a Vindication of the Hon. Mr. Higginson, Mr. Mason, and Several Other Gentlemen from the Scandalous and Wicked Accusation of The Votes, Ordered by Them to Be Published in Their Boston News-letter. To Which Is Added an Account of the Shameful Miscarriage of the Late Expedition Against Port-Royal (London, 1708) reprinted in 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (5th series) 97 (1879).

57. Letter of Increase Mather to Joseph Dudley, January 20, 1707-08, reprinted in 3 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (1st series) 126 (1794). See also Letter of Cotton Mather to Joseph Dudley, January 20, 1707-08, *id.* at 132.

58. See Mather, *Present Deplorable State*, *id.* at 31.

59. See *By the Honourable the Council of His Majesties Province of the Massachusetts-Bay in New-England. A Declaration. Whereas a Printed Sheet, Not Sign'd by Any Person, Intituled, The Case of His Excellency the Governour and Council . . . Truly Stated, Was Laid Before the Board . . . Given at the Council Chamber in Boston, upon Friday the Eighteenth Day of March, 1714.* (Boston: B. Green, 1715). Signed by Wait Winthrop and fourteen others. For an account of the dispute between the governor and Council, see 15 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (2nd series) 327-362 (1902). "The case of His Excellency the Governour and Council . . . truly stated" is attributed to Paul Dudley in SIBLEY, HARVARD GRADUATES, *supra* note 7, at 53.

60. The only reference to the manuscript letter, other than the pamphlet itself, seems to be a letter by Sir Henry Ashurst to Wait Winthrop on September 16, 1704. Winthrop Papers (Part 6), 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 133 (1892). The attempts by the Mathers in 1708 and 1709 and by Governor Jonathan Belcher in 1739 and 1740 to locate the original letter are chronicled in Hassam, *supra* note 12, at 28-30. Governor Belcher appears, despite the absence of an original letter, to have caused the printed version to be sent from London to the Secretary of the House of Representatives in 1740. The House found that "the Letter contains sundry injurious and scandalous Reflections upon the Honorable Paul Dudley," who was then a member of the House, and that "it is unworthy of the Notice of this House, save of their Displeasure and that therefore the aforesaid Letter be delivered by the Speaker to the said Paul Dudley, Esq." JOURNAL OF THE HOUSE OF REPRESENTATIVES, 1740-41, at 8 (Boston, reprinted by the Massachu-

to the position, he was, however, free from the greater part of any popular pressure, so long as he maintained royal favor, which he kept until the death of the queen. That Paul, his loyal lieutenant and attorney general, shared his rather undemocratic views is as certain as the unpopularity of these views in Massachusetts.

Politics, however, was a sport which Paul Dudley would play in public only until 1718. After his appointment to the bench and his father's retirement, he began to devote his time to less partisan causes. With the exception of Governor Belcher's administration, Paul's public duties, even in the legislature, generally rose above faction. His other concerns were distinctly non-partisan, and it is about this time when Paul Dudley began to pursue an avocation in natural history.

Dudley the Naturalist

The generations following the restoration of the English monarchy were marked by the contributions to science made by nobles and gentlemen amateurs, spurred particularly by the Royal Society, headquartered in London. Many of the leaders of the English colonies in America communicated with the Society, and some were made members.⁶¹

Paul Dudley's devotion to natural history seems to have been awakened in 1719, when he was freed from hustling as attorney general and as his father's agent. He entered a period of both dedication and insight in describing the natural world. This took two forms of interest, one in describing the natural world, and the other in studying the native population, with whom he negotiated on behalf of the colony.

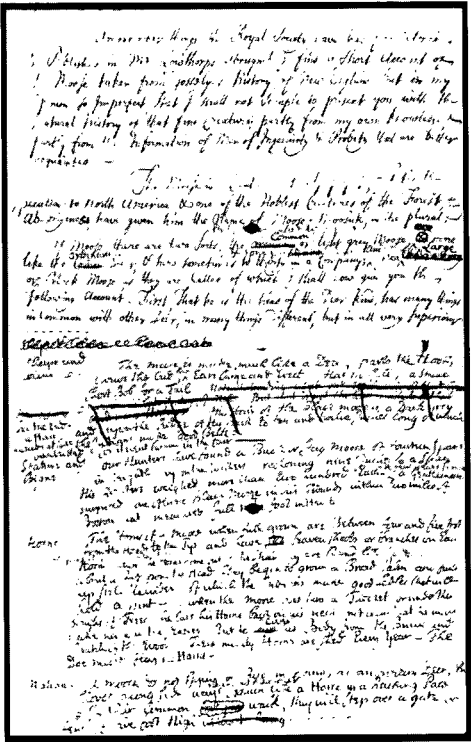
It was Dudley's natural science writing that earned him recognition in London. In a series of letters of 1720 and 1721 to John Chamberlayne of London, a member of the Royal Society, Dudley described a variety of reports from explorers and traders in the interior, as well as a number of observations of natural phenomena. Some of these letters were quite remarkable, and Chamberlayne's communications of the letters on to the Society

setts Historical Society, 1942).

Both Thomas Hutchinson and later historians have been prone to accept the letter as genuine and the charges of the pamphlets as true. See, e.g., 2 HUTCHINSON, HISTORY, *supra* note 9, at 114; 4 SIBLEY, HARVARD GRADUATES, *supra* note 7, at 45. Hassam, however, is quite skeptical of the authenticity of the letter, mustering considerable evidence for doubt that Paul Dudley wrote it, not the least being the very uncertain identity of the recipient. Hassam, *supra* note 12, at 28-30. It would not be the only spurious attack to be made against Paul Dudley. See 17 GENTLEMAN'S MAGAZINE 211, 295 (1747); retracted and apologized, 18 GENTLEMAN'S MAGAZINE 232 (1748).

61. By the time of Paul Dudley's membership in 1721, twelve other American colonists had become members of the Society, among them John Winthrop, William Penn, Cotton Mather, and Elihu Yale. See Raymond Phineas Stearns, *Fellows of the Royal Society of London, 1661-1788*, 3 WM. & MARY Q. 208 (1946).

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Manu-
script
draft of
essay, "A
Descrip-
tion of the
Moose-
Deer,"
for the
Royal
Society.
Boston,
ca. 1720.

led to their initial publication in the Society's famous journal, *Philosophical Transactions*.⁶²

One of his most important letters was not published, however, because its descriptions of the interior of the continent were potentially too advantageous to rival French explorers and colonists. The letter did lead directly to Dudley's election to the Society, on November 2, 1721, on the motion of the Society's Vice President, Sir Hans Sloane.⁶³

In all, the Society published eleven essays, generally observations of natural phenomena⁶⁴ or the husbandry of nature.⁶⁵

One report chronicled the native use of the sweat lodge.⁶⁶ While a few reports bordered on the mundane, as in describing the size and weight of a

62. PHILOSOPHICAL TRANSACTIONS, GIVING SOME ACCOUNT OF THE PRESENT UNDERTAKINGS, STUDIES AND LABOURS OF THE INGENIOUS, IN MANY CONSIDERABLE PARTS OF THE WORLD (London, W. & J. Innys). Dudley's first official communication to the Society was sent through Chamberlayne and read at a meeting in October 29, 1719, 12 Journal Book of the Royal Society 363-64 (MS in the Royal Society Library, London), cited in Raymond Phineas, Stearns, *Joseph Kellogg's Observations on Senex's Map of North America* (1710), 23 MISSISSIPPI VALLEY HISTORICAL REVIEW 345, 348 n.12 (1936).

63. See Paul Dudley, *A Short Account of a Trading Voyage performed by Joseph Kellug, an English Man of New England in Company with Six French Men from Canada to Mississippi in the year 1710 in two Cannoos made of Birch Bark, with some general remarks made by the said Kellug* (MS in Royal Society, Classified Papers 1660-1740) reprinted in Raymond Phineas Stearns, *Joseph Kellogg's Observations on Senex's Map of North America* (1710), 23 MISSISSIPPI VALLEY HISTORICAL REVIEW 345, 351-54 (1936).

64. For his reports on moose, poison sumac, and Niagara Falls, see Paul Dudley, *A Description of the Moose-Deer in America*, 31 PHILOSOPHICAL TRANSACTIONS 165 (No. 368 for May to August 1721)(1723); -, *Account of the Poison-wood tree in New England*, 31 PHILOSOPHICAL TRANSACTIONS 145 (No. 367 for January to April, 1721)(1723); -, *An Account of the Falls of the River Niagra from Monsieur Borasaw*, 32 PHILOSOPHICAL TRANSACTIONS 69 (No. 371 for April to May, 1722)(1724).

65. See Paul Dudley, *An Account of the Method of making Sugar from the juice of the Maple-tree in New England*, 31 PHILOSOPHICAL TRANSACTIONS 27 (No. 364 for January to April 1720)(1723); -, *An account of a Method lately found out in New England covering where the Bees hive in the woods, in order to get their Honey* 31 PHILOSOPHICAL TRANSACTIONS 148 (No. 367 for January to April 1721)(1723); -, *A New Sort of Molasses Made of Apples, and of the Degenerating of Smelts* 32 PHILOSOPHICAL TRANSACTIONS 231 (No. 374 for November to December 1722)(1724); -, *Observations on some Plants in New England, with remarkable instances of the Nature and Power of Vegetation*, 33 PHILOSOPHICAL TRANSACTIONS 194 (No. 385 for October to December, 1724)(1726)(primarily discussing the success of English transplants to America).

66. Paul Dudley, *An Account of an extraordinary cure by Sweating in Hot Turf: with a description of the Indian Hot-houses*, 33 Philosophical Transactions 194 (No. 384 for July to September, 1724)(1726).

stone taken from a horse,⁶⁷ the bulk were significant contributions to European knowledge.

His letters to the Society often mixed personal observation with reports of others' experience, with occasionally mixed results. For example, his discussion of rattlesnakes appears to be based on a combination of first-hand reports by Dudley's friends and brother, mixed with tales from colonists and natives, but not on any observation by Dudley himself. He therefore asserted on the one hand that the snake's poison must enter the body to cause harm but on the other that the snake "will charm both Squirrels and Birds from a Tree into his Mouth."⁶⁸

Despite such colorful errors, Dudley was an astute observer, both keen to report items of significance and capable of drawing powerful conclusions from his own observations, others' reports, and official records. His essay on whales⁶⁹ has established him as America's first cetologist.⁷⁰ In his last report to the Society, his essay on *Earthquakes*,⁷¹ Dudley examined records of earthquakes as early as 1638 before relating his careful observations of an earthquake in 1727. He began his discussion of the last earthquake with a consideration of the weather for the year previously, in order to describe the condition of the earth to react to an earthquake. He described its sound and motion and its effect and aftermath in considerable detail, including its course up and down the eastern seaboard. From this he hypothesized that the earthquake occurred along "subterraneous Channels or Caverns, through which the Exhalation passes. . . . not in any one continued streight line, but branched out, and running upon all Points of the Compass."⁷²

Dudley was also fairly conversant with several native dialects. In a letter to Chamberlayne of January 20, 1721, Dudley noted that he had been compiling a dictionary of the "Pequot or Moheeg Language," although it was still quite rudimentary.

67. Paul Dudley, *An Account of a Stone taken out of a Horse at Boston in New England*, 34 PHILOSOPHICAL TRANSACTIONS 261 (No. 397 for April to June, 1727)(1728).

68. Paul Dudley, *Account of the Rattle-Snake*, 32 PHILOSOPHICAL TRANSACTIONS 292 (No. 376 for March to April, 1723) (1724). Dudley's was not the first report of the rattlesnake in the *Transactions*. See *An Extract of Several Letters from Cotton Mather*, 29 PHILOSOPHICAL TRANSACTIONS 62 (for January to March 1714).

69. Paul Dudley, *An Essay upon the Natural History of Whales, with a particular account of the Ambergris, found in Spermaceti Whales*, 33 PHILOSOPHICAL TRANSACTIONS 256 (No. 387 for March to April, 1725)(1726).

70. See Daniel Vickers, *The First Whalers of Nantucket* 40 WM. & MARY Q. 560, 563 (1983). This is not to say that Dudley was the only whale-writer. See George L. Kittredge, *Some Lost Works of Cotton Mather*, 45 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS 418, 468-470 (1911-1912).

71. Paul Dudley, *An Account of several Earthquakes which have happened in New-England since the first settlement of the English in that country, especially of the last, which happened in October 29, 1727*, 39 PHILOSOPHICAL TRANSACTIONS 63 (No. 437, for April to June 1735)(1738).

72. *Id.* 71-72.

During the Time our Indian hostages and the Interpreter were at Boston I composed a small Nomenclature to which I have added some Remarks on the Indian Language with an Account of some of their manners and Customs with my Opinions of their Origine or first Migration. I dare not send it for fear You should first laugh at me yourself and then expose me to others.⁷³

The dictionary was simple but thorough,⁷⁴ and it reflected not only Dudley's own work but also his discussions with a translator from Martha's Vineyard, Experience Mayhew.⁷⁵ His facility with native dialects must have been one reason for Dudley's appointment to serve as a commissioner to meet the Five Nations at a negotiation at Albany in 1721.⁷⁶

The Superior Court of Judicature

Throughout Paul's tenure as attorney general, his father made every effort to advance his son's career, some steps less successful than others. When the secretary of the province fell ill in 1706, Governor Dudley moved to promote Paul for the office, prematurely; the secretary recovered and served for another nine years.⁷⁷ In 1715, the governor advanced Paul's name to become a Probate judge, a nomination the council declined to accept, ten votes to nine.⁷⁸

Indeed it was left to Governor Samuel Shute, newly installed to succeed Governor Dudley in 1716, to advance Paul Dudley's office. Shute was a friend to the Dudleys, so much so that he stayed at Paul Dudley's house when he first arrived in New England with his gubernatorial warrant.⁷⁹

73. Letter of Paul Dudley to John Chamberlayne, January 20, 1721/2, reprinted in 19 NEW ENGLAND HISTORICAL AND GENEALOGICAL REGISTER 20-22 (1865).

74. See J. Wingate Thornton, *English Definitions of Indian Terms. From Paul Dudley's Papers*, 5 MAINE HISTORICAL SOCIETY, COLLECTIONS (1st series) 425 (1857).

75. Letter of Experience Mayhew to Paul Dudley, March 20, 1721-20, reprinted in 39 NEW ENGLAND HISTORICAL AND GENEALOGICAL REGISTER 10 (1885).

76. A Short Account of the Names and Numbers of the Five Nations in Alliance with the Government of New England and under the Protection of the Crown of Great Britain, Taken from a memorandum of Paul Dudley's, Esq., who had it at Albany, 1721, in 8 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (2nd series) 243 (1826).

77. See Letter of Joseph Dudley to —, February 15, 1705-06, Winthrop Papers (Part 5), 3 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 551 (1889). When the Secretary, Isaac Addington, did die, in 1715, Joseph Dudley appointed Paul Dudley and Addington Davenport as commissioners to secure the provincial seals until the new Secretary, Samuel Woodward, took office. See 6 COUNCIL RECORDS 335, reprinted in COLONIAL SOCIETY OF MASSACHUSETTS, TRANSACTIONS 99 (1915); 47 Massachusetts Archives 427, BOSTON NEWS-LETTER, April 18, 1715.

78. 2 SEWALL, DIARY, *supra* note 17, at 790, entry for April 7, 1715.

79. 2 HUTCHINSON, HISTORY, *supra* note 9, at 163. It is an understatement to suggest that

In 1718, the new governor was apparently aware of a proposal that Paul Dudley should become chief justice of the Superior Court. The idea was presented to the older Samuel Sewall, who had been a member of that court since it had first been established. Sewall recorded his Saturday, February 8 meeting with Jonathan Belcher who sounded him out on whether he would allow Paul Dudley to become chief justice.⁸⁰ Sewall wrote back on February 11, noting that he desired the chief justiceship for himself.⁸¹

Shute appointed Sewall as chief justice and, on November 20, 1718, Paul Dudley as associate justice of the Superior Court. Sewall and Dudley had already been close acquaintances in many enterprises and appear to have developed a quite cordial relationship on the bench, despite Sewall's initial misgivings. Eight years later, Judge Sewall would respond to an invitation by noting, "If you please to entertain Judge Dudley in my room, 'twill please me. His Honour will be very good company."⁸²

In 1718, Massachusetts had very few trained lawyers or, for that matter, judges. There was yet no university legal instruction, and there were too few lawyers in the province to establish a practice of office training.⁸³ At the time of Dudley's appointment, only one judge had yet served on the Superior Court of Judicature who had been a trained lawyer, Benjamin Lynde, who had been appointed in 1712 and whose death after a sixteen-year tenure as chief justice would open the seat for Dudley. Prior to the advent of Lynde and Dudley, judges acted with some slight exposure to the law books⁸⁴ but rested their decisions primarily on the Scriptures and right reason.⁸⁵

The official records of the court for this period record very little of the opinions of the Superior Court of Judicature, al-

such a close relationship between Shute and the son of his predecessor aroused misgivings. Sewall noted that Shute's decision to stay initially with Dudley, rather than the house chosen for him by his reception committee, "makes many fear that he is deliver'd up to a Party. *Deus avertat Omen!*" 2 SEWALL, DIARY *supra* note 17, at 834, entry for October 5, 1716.

80. 2 SEWALL, DIARY *supra* note 17, at 883, entry for February 8, 1718.

81. 2 Sewall, Letter-Book, *supra* note 54, at 89-90 (1888).

82. Letter of Samuel Sewall to Thomas Robie, October 24, 1726. 2 Sewall, Letter-Book, *supra* note 54, at 215 (1888).

83. The origins of legal education in Massachusetts, particularly the early years of Harvard's instruction, are described in THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES (2 vols.) (Steve Sheppard, ed. 1999).

84. Massachusetts did have a supply of English law books in the seventeenth and eighteenth centuries, as well as having produced two astonishing books of its own, *The Body of Liberties* (1640) and the *Book of General Lawes and Libertyes* (1648). See Morris L. Cohen, *The Legal Literature of Colonial Massachusetts* in LAW IN COLONIAL MASSACHUSETTS 1630-1800, *supra* note 47, at 243.

85. See Edgar J. Bellefontaine, *Samuel Sewall: The Last Puritan Justice*, 4 MASSACHUSETTS LEGAL HISTORY 5, 12 (1998); F.W. Grinnell, *The Bench and Bar in Colony and Province* (1630 -

though they generally reflect the arguments of counsel and the facts in contention much more fully. In part, this absence of judicial opinion is owing to the significance of the jury in the appellate process of the time. While it may be odd to the modern eye to see the appellate court acting as a trier of fact *de novo*, the effect of the predominate role of the jury on appeal was often to readjudicate the whole claim. The court usually acted as a single body in accepting, rejecting, or modifying the appellate jury's verdict. Thus, without evidence from diaries or other collateral reportage, it is difficult now to discern either the influence of one justice in the outcome of a case or a legal basis for the court's decision.⁸⁶ Even so, there is some foundation to believe that Dudley and Lynde, long the only trained lawyers on the bench, exercised considerable weight when they expressed an opinion in camera.⁸⁷

One unusual resource which illuminates at least Dudley's view of his role on the bench is his diary for the year 1740,⁸⁸ which has been published twice and is reported to be interleaved into Stafford's almanac for 1740.⁸⁹ The entries suggest that Dudley was already in the habit of keeping a diary, and he may well have employed earlier editions of the same diary for this purpose.⁹⁰

Dudley was no diarist, and anyone hoping for the rich description of Samuel Sewall will find Dudley disappointing. His entries are overwhelmingly concerned with the weather, crops and wildlife, although local epidemics, the deaths of prominent colonists, official news such as troop movements, and the strengths of local preachers, are sprinkled throughout, as are

1776) in 2 ALBERT BUSHNELL HART, COMMONWEALTH HISTORY OF MASSACHUSETTS (1966); JOHN P. DAWSON, A HISTORY OF LAY JUDGES (1960).

86. The materials extant for the Superior Court of Judicature for this period are chronicled in Michael S. Hindus, *A Guide to the Court Records of Early Massachusetts*, in LAW IN COLONIAL MASSACHUSETTS 1630-1800, *supra* note 47, at 519. A fine interpretative primer for these records is in William E. Nelson's *Court Records as Sources for Historical Writing* in *id.* at 499.

87. See Stephen Sewall's claims in this regard, made in Dudley's obituary, below at pages 27-28.

88. Dudley's diary has been printed twice, once in an apparently expurgated form, and once in a fuller form. The longer form is in *The Diary of Paul Dudley*, 35 NEW ENGLAND HISTORICAL AND GENEALOGICAL REGISTER 28 (1881) (hereinafter, Dudley, Diary 35 REGISTER). The short form is in 15 NEW ENGLAND HISTORICAL AND GENEALOGICAL REGISTER 58 (1861). Both report the diary as the property of B. Joy Jeffries, a doctor in Boston. Neither printing is perfectly complete, and both must be consulted by the modern reader. It is quite likely that Dudley began keeping his diary as a response to a letter from the Secretary of the Royal Society, to whom perhaps at least one volume was sent. In a letter of December 18, 1733, Dudley noted that he had undertaken to maintain a Journal of the Winds and the Weather. See DEAN DUDLEY, HISTORY, *supra* note 17, at 524.

89. JOSEPH STAFFORD, AN ALMANACK FOR THE YEAR OF OUR LORD, 1740 (Boston, printed by T. Fleet, 1740) (Available in microform in Early American imprints. First series; no. 4428).

90. E.g., JOSEPH STAFFORD, THE ALMANACK FOR THE YEAR, 1738 (Newport, 1738). Earlier editions were also known as *The Rhode Island Almanack*.

notes of official duties—particularly sittings of the General Court and of the Superior Court. During that year, Dudley noted or described three sittings of the Superior Court, in May, June, and October.

When compared to the *Record Book* for the Superior Court of Judicature, Dudley's diary is apparently less than accurate and complete, although it is instructive of his attitude toward some judicial business. In 1740, the first judicial entry Dudley records is "May—Tedious Courts at Plymouth and Barnstable. A great deal of business left undone and continued to the next year. My own health very poor.—not a single criminal at either Court."⁹¹ It is likely these entries relate to sittings for the Inferior Court because there are no May entries in the *Record Book* for Superior Court sittings at Plymouth and Barnstable.

On the other hand, the *Record Book* lists Paul Dudley as one of the five justices in attendance at the first session of the Superior Court, recorded as sitting in Ipswich, beginning May 13.⁹² During this sitting the court recorded forty-eight cases called. Twenty-six of these, however, were summary affirmations of rulings for debt or damages below in which one party had been given leave to appeal but had not prosecuted the appeal. Four more were approvals of estate sales, and one was a quashed appeal. There was a criminal matter, *Rex v. Fry*, a counterfeiting charge for which the defendant was found not guilty.⁹³ Of the remaining nineteen cases, seven were brought as actions on the case, two for trespass, one for ejectment to quiet title in a reversion, one writ of scire facias for waste, two consolidated cases both in debt and case, and the rest were scire facias or other attempts to execute a prior judgment of the Superior Court. The most interesting element of the cases in issue, though, is the frequency in which the inferior courts were over-ruled. Twelve judgments were reversed, two confirmed, and one had remittitur, damages initially set at £20 being reduced to £12 and 10s. With the exception of the two consolidated cases, which were reversed on the basis of an arbitrators' report,⁹⁴ the remainder were based on jury verdicts. The session ended on May 16.⁹⁵

There is a closer fit between Dudley's entries for June and

91. Dudley, *Diary*, 35 REGISTER, *supra* note 88, at 29.

92. County Court Files, Superior Court of Judicature, 1739-1740, at 207. "At His Majesty's Superiour Court of Judicature, Court of Assize, and General Gaol Delivery begun and held at Ipswich within & for the County of Essex, for the second Tuesday of May, being the thirteenth Day of the said Month, Annoque Domini 1740. By the Honorable Benjamin Lynde, Esq., Chief Justice, Paul Dudley, Jonathan Remington, Richard Saltonstall, Stephen Sewall, Esq. Justices."

93. *Id.* at 219.

94. *Id.* at 207-08.

95. *Id.* at 222.

October and the court *Record Book*. In June, Dudley records "A tedious Court at York. Little more than half the business finished. Two persons received sentence of Death. An Englishman for Murther, an Indian for Rape on a child of 3 years old. I was much indisposed at York and obliged to come home before the Court was over."⁹⁶ The *Record Book* describes a session at York (now in Maine), commencing on June 18.⁹⁷ This session had two criminal causes, *Rex v. Necho*,⁹⁸ the rape case, and *Rex v. Browne*,⁹⁹ the murder case, both of which defendants were ordered executed. The case of George Necho is particularly interesting in that an unsuccessful motion was made on behalf of the defendant that he be given the benefit of clergy:

A Jury was sworn . . . who after fully hearing the Evidences of the King with the Prisoner's Defense, went out to consider thereof, & returning into Court did upon their Oaths declare & say, That the said George Necho is Guilty of unlawfully & carnally knowing & abusing Susanna Kimball according to the indictment. Whereupon it being moved in behalf of the Prisoner, that he might have the Benefit of Clergy, the court resisted Judgment on the Verdict till this time. And now the Prisoner by his Council being fully heard on the said Motion, after the most mature Deliberation, It is considered by the Court, that the said George Necho cannot by Law be admitted to the Benefit of his Clergy.¹⁰⁰

The session was otherwise reasonably similar in actions, length, and result to the session at Ipswich. Several dozen summary affirmations, three estate sale approvals, a partition decree, an appeal dismissal, and a discharge of indictment were made *pro forma*. The remaining cases included three interrelated cases among the owners of the town commons of Kittery and of Berwick and a pair of private landowners, in which lower court decrees awarding interests in the commons were all reversed and the interests reallocated.¹⁰¹ There were more actions for trespass, toward which the appellate jury seemed quite hostile,

96. Dudley, Diary, 35 REGISTER, *supra* note 88, at 29.

97. County Court Files, Superior Court of Judicature, 1739-1740, at 223.

98. *Id.* at 225.

99. *Id.* at 230.

100. *Id.* at 225.

101. Fernald v. Owners of Kittery Commons, Goodwin v. Owners of Berwick Commons, Goodwin v. Owners of Kittery Commons, *id.* at 223-225.

and no actions for debt, although there was an interesting but unsuccessful action for interference with trade, in which the Superior Court reversed its own earlier judgment, based on a new jury verdict.¹⁰² The jury gave remittitur on one action on the case and upheld the lower verdict on the other. There is no notation of those cases in which Dudley was not present. The court rose on June 27.¹⁰³

Dudley does not record sessions in July or August, although he is recorded as present when the court sat in Cambridge from July 29 to August 8.¹⁰⁴ His next entry is in October, "A Tedious long court at Bristol not finished till Munday ye 3^d of November."¹⁰⁵ The Superior Court sat at Bristol on October 22, holding its longest session recorded for the year.¹⁰⁶ This sitting was particularly rich in cases brought on arbitrators' reports, and in property cases.

The picture that emerges, then, from this cursory review of Dudley's diary in the light of the records raises nearly as many questions about Dudley's activities on the bench during these sessions as it answers. There are, however, several initial conclusions that might be drawn, at least tentatively. The first is that Dudley had no great love for the routine commercial docket of the bench, the actions for debt, actions on the case (usually early forms of contract action), and actions to determine interests in land. The second is that the court relied heavily on the findings both of the appellate jury and, in fewer but more complex cases, on commissions of arbitrators to which litigants took their cases between the judgment of the inferior court and the hearing of the case on appeal. The degree to which the bench relied on precedent or on the judgment of one or another member of the court to determine more technical issues, such as whether Necho should receive benefit of clergy, is not clear, although further research may shed more light in this regard.

While on the bench Dudley continued to serve the province in a variety of independent roles. For American sensitivities two centuries later, accustomed to a stricter separation of powers, the most unusual must be that the judge served for many years in both executive and legislative offices.

Dudley's seat in the General Court from 1718 to 1721 was from Sagadahoc, an area in which his holdings were less extensive than elsewhere, and in July 1721, his opponents questioned

102. *Sherburne v. Rice*, *id.* at 229.

103. *Id.* at 240.

104. *Id.* at 241, 277.

105. Dudley, *Diary*, 35 REGISTER, *supra* note 88, at 31.

106. County Court Files, Superior Court of Judicature, 1739-1740, at 278-316.

his status as a landholder there, qualified to represent the district.¹⁰⁷ His response that their enquiry was too late was insufficient to keep the House, on July 6, from voiding his election unless he could prove his qualification, an action in which the upper house unanimously non-concurred.¹⁰⁸ He continued to sit and indeed was chosen for his mission to Albany later that same year.¹⁰⁹

The late 1720s and early 1730s found Dudley in a political brush war with the governor, Jonathan Belcher. The political divisions begun during Joseph Dudley's administration had worsened, turning by then into an entrenched division between two political parties. The Dudleys were generally identified with the "prerogative" party, while the radicals and levelers had formed a "popular" party, backed by Elisha Cooke and those who had favored the land bank. Belcher, a successful Boston merchant, initially sided with the prerogative party, but shifted to the popular side in 1728, with the support of which he was elected to the council in 1729 and, with the support of Governor Shute, appointed governor, taking his office in 1730. His administration saw reversals of fortune, however, for both British policy in London and for the radicals, which, coupled with a violent temper, led to a stormy decade for his administration, which ended in 1741.¹¹⁰

Belcher kept few friends and began immediately to distrust Paul Dudley, whom he thought behaved toward the new governor "with great duty and respect; yet I know he doesn't love me, and perhaps I mayn't continue him as a Judge."¹¹¹ Typical of his elliptical descriptions of his opponents, Belcher referred to Dudley as "The Filthy Slut" and "our Sarah," whom he disallowed as a member of the Council, in part as repayment for Dudley's criticism of Belcher's monetary policies, which led to Dudley's enhanced prestige with the House. Belcher eventually sought to reconcile with Dudley, if he would ask Belcher's pardon. This Dudley refused to do, and their feud continued until Belcher was recalled.¹¹²

107. 2 HUTCHINSON, HISTORY, *supra* note 9, at 193.

108. See also NEW ENGLAND COURANT, April 30-May 7, 1722.

109. See text on page 16, *infra*.

110. See generally 4 SIBLEY, HARVARD GRADUATES, *supra* note 7, at 434-449.

111. Belcher Papers (Part 1), 6 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 39 (1893). Belcher's hatred built as he saw slight after slight at Dudley's hand, "taking occasions at the Council Board to treat me with insufferable insolence" and criticizing his profits in office. Letter of Jonathan Belcher to Horace Walpole, January 21, 1739/40, Belcher Papers (Part 2), 7 MASSACHUSETTS HISTORICAL SOCIETY, COLLECTIONS (6th series) 264, 266 (1894).

112. See *id.* at 260, 267, 317, 333.

Dudley in Roxbury

Paul Dudley took seriously his obligations as a leading citizen of the province. He served in unrewarding offices not only for the province but also for the various towns that had a claim upon his loyalties. In the year Joseph Dudley died, Paul and his wife removed to Roxbury, where he had a new stone bridge built over the Main Street.¹¹³ He served occasionally as Moderator of the Town Meeting.¹¹⁴

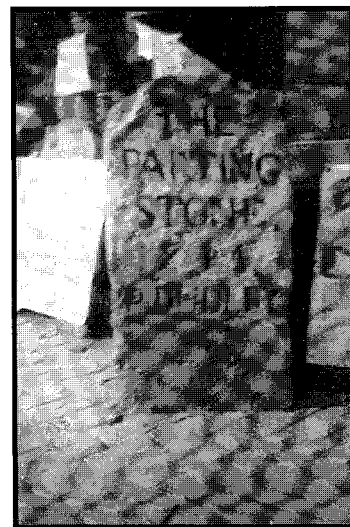
Paul Dudley would live in Roxbury for the rest of his life, but not without incident. The following autumn, his house was burgled and the Dudley silver, as well as some of Paul's clothes and his periwig, were stolen.¹¹⁵ It may well be unrelated to the incident, but the Dudleys moved into a new house the following winter.¹¹⁶

He was a feoffee, or trustee, of the Roxbury Latin School, for whom he frequently made petitions to the General Court. When its new building was complete in 1742, he gave it a "good, handsome bell."¹¹⁷ He was active in supporting the First Church of Roxbury, which was the town's official church, giving it both considerable money and management over many decades.¹¹⁸

One of the most intriguing memorials Dudley left to his town are a series of mile stones, some of which he seems to have erected following surveys with Judge Sewall and the young Jonathan Belcher.¹¹⁹

Although he lived in Roxbury, his estates, particularly in the western lands of the province, were extensive, and Paul Dudley was a patron to other towns as well. He was a proprietor of Leicester in 1713. In 1731, the town of Dudley was incorporated; he and his brother William owned most of its lands, and Paul gave £10

"Parting Stone,"
Roxbury
mile
marker,
erected in
1744.
Photo-
graph,
1899.



Courtesy
of the
Bostonian
Society.

113. The Roxbury Town Records include a resolution of March 7, 1719/20, in which the town "Voted that the Selectmen are desired to Return thanks to the Honourable Paul Dudley Esqr. For Building the upper Stone bridge over Smelt brook in the town street, And that henceforward it be Called by the name of Dudleys Bridge." ROBERT J. DUNKLE & ANN S. LAINHART, *TOWN RECORDS OF ROXBURY, MASSACHUSETTS, 1647 TO 1730*, at 386 (1997).

114. *Id.* at 413, 456.

115. BOSTON NEWS-LETTER, September 25, 1721.

116. Samuel Sewall noted that the house was raised on July 17, 1722, and that he "Visited Mr. Dudley and wish'd him joy of his new House" on January 22, 1723. 2 SEWALL, *DIARY*, *supra* note 17, at 1004.

117. DILLAWAY, *GRAMMAR SCHOOL IN ROXBURY*, *supra* note 11, at 64.

118. WALTER ELIOT THWING, *HISTORY OF THE FIRST CHURCH IN ROXBURY, MASSACHUSETTS, 1630-1904*, at 77 (1908).

119. See Samuel Abbott Green, *Old Mile-Posts Leading from Boston*, 2 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (3rd series) 87 (1909).

toward a minister's hire, pine timber for a meeting house, a book for town records, and various books for a library.¹²⁰

These benefactions were the product of Dudley's sense of noblesse oblige, but this sense itself had a high price, not the least in its inseparability from Dudley's oligarchic view of the necessity of leadership of the masses by their aristocratic betters. Such a sense, not always well hidden, tainted Dudley's benefactions in the minds of the radical Puritans of the province. In 1722, editorials in the *New England Courant* pointedly referred to Dudley, then newly installed in the family seat of Roxbury:

A certain Gentleman some time last Week, in his Conversation (in the Hearing of divers Persons) was pleased to say, *That he should make his Tenants know, that they should vote for good Honest Men for Representatives, such Men as he would have them vote for, or else he would turn them out of his Tenements.*¹²¹

A charge of buying the people's affections for such loyalty came easily after reporting such a view.

When men (covetous Men especially) endeavour to advance themselves by *Gifts*, it is strong Proof that they design to pay themselves by an unjust Improvement of their Places, tho' at the Expence of those who have promoted them. . . .

'Tis said our first Church has receiv'd a Present of a fine Piece of Plate, from a noted Family among us. . . . Whether the Motive to this Gift in such a critical Juncture, was a Principle of *Generosity*, or something else, has been a matter of great Debate.¹²²

While such charges were neither un rebutted nor universal,¹²³ they were part and parcel of the uneasy political balance that existed between the aristocratic patron and his leveling beneficiaries.

Regardless of such charges, one form of his benefactions was

120. 12 MASSACHUSETTS HISTORICAL SOCIETY, PROCEEDINGS (1st series) 412 (1873).

121. NEW ENGLAND COURANT, April 23-30, 1722, *quoted in* 4 SIBLEY, HARVARD GRADUATES, *supra* note 7, at 48-49.

122. NEW ENGLAND COURANT, May 7-14, 1722, *quoted in* 4 SIBLEY, HARVARD GRADUATES, *supra* note 7, at 49.

123. Other correspondents charged the stories in the *Courant* were lies, and sought for Dudley to continue his patronage. BOSTON GAZETTE, May 14-21, 21-28, 1722.

made in the sincere hope of the improvement of others. In his will, Dudley left £133 6s 8d for the endowment of a series of lectures at Harvard. The money was to endow annual lectures on four rotating themes, one being “for the detecting and convicting and exposing the Idolatry of the Romish Church, Their Tyranny, Usurpations, damnable Heresies, fatal Errors, abominable Superstitions, and other crying Wickednesses in their high Places.”¹²⁴ This instruction was very much in the vein of his anti-papist tract, *An Essay on the Merchandize of Slaves & Souls of Men*.¹²⁵ The delivery of these lectures persists to the present time, albeit with a less restricted subject matter.¹²⁶

Chief Justice

The death of Chief Justice Benjamin Lynde allowed for Dudley’s appointment to the chief justiceship in 1745. He would serve until his death, six years later. The court’s business during these years followed substantially the same patterns it had during Dudley’s years as associate justice.

The one aspect of his days as chief justice of which one might be certain is his short temper with long-winded counsel. In Dudley’s obituary, Stephen Sewall noted that:

The Powers of his Mind retain’d their Vigour to a remarkable Degree in his advanced Ages though he labour’d under great indispositions of Body. These were often heavy upon him while attending the Business of the Court, which perhaps occasioned his discovering some Impatience, when Arguments at the Bar were drawn out to great length, and his expressing himself with some appearance of Severity. But if he gave

124. 1 Harvard College Papers 88. This instruction was followed for some years. See, e.g., Jonathan Mayhew, *Popish Idolatry: A Discourse Delivered in the Chapel of Harvard College in Cambridge, New-England, May 8, 1765, at the Lecture Founded by the Honorable Paul Dudley, Esquire* (Boston: R. & S. Draper, Edes & Gill, and T. & J. Fleet, 1765).

125. *A Seasonable Caveat Against Popery, Or, an Essay on the Merchandize of Slaves and Souls of Men: Revelations XVIII. 13: With an Application Thereof to the Church of Rome* (Boston, B. Green 1731) and (London, Joseph Downing 1732). In this tract, Dudley attacked Roman Catholicism in tones not unusual for his age, but on somewhat novel lines. He argued that the Pope was profiting by heretically encouraging commerce in the bodies of the dead and in the souls of the living and the dead, through encouraging tithes and fees for burials and unction, through encouraging pilgrimages and the veneration of relics, and through the promotion of canonization of saints and masses for souls in purgatory.

126. The Harvard Divinity School scheduled as its Dudleian Lecture for the 1999-2000 academic year a lecture by Anglican nun and author Benedicta Ward, Theology Fellow at Oxford University and associate of Manchester College, speaking on “Hermits and Harlots: Aspects of Monastic Spirituality.”

any Disgust in public, he made full Amends for it in private and polite Conversations.¹²⁷

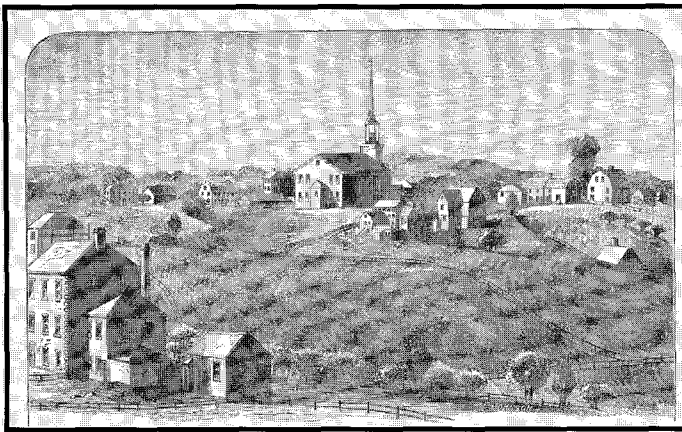
One of the most famous cases to occur while Dudley was chief justice was the libel action, *Knowles v. Douglass*.¹²⁸ Commodore Charles Knowles had sent press gangs onto ships and along the wharves of Boston in 1745, after which a riot in Boston caused Governor Shirley to flee to the town's fort. William Douglass, a local doctor, published a history in 1747 in which Knowles was unflatteringly portrayed; Knowles sued and Douglass counter-sued. The jury in the Inferior Court found for Douglass, awarding him damages and the costs of his suits against Knowles. The jury in the Superior Court agreed, and the court entered judgments for Douglass, although an appeal with no known

outcome was allowed to the Privy Council.¹²⁹

Paul Dudley died on January 25, 1751. He had served a combined tenure on the Superior Court second in length only to his friend Samuel Sewall's, who lasted three years longer on the bench.¹³⁰ In his three decades with the court, Dudley's

skill and demeanor acquired a reputation that moved far beyond the rambunctious partisanship of his years as attorney general. Samuel Curwen would later recall seeing Dudley on the bench, comparing him to the formidable appearance of Lord Mansfield, whom Curwen had just seen sitting in England. "Lord Mansfield's manner is like the late Judge Dudley's of Massachusetts. His peering eyes denote a penetration and comprehension pecu-

"Meeting House Hill in 1790," site of the Dudley Estate.



Engraving in *The Town of Roxbury*, by Francis S. Drake, 1878.

127. Stephen Sewall, *The Character of the Late Honourable Judge Dudley, As it Was Inserted in the Boston News-letter*, February 7, 1751, from the BOSTON WEEKLY NEWS-LETTER, Feb. 7, 1751 (Boston, printed by John Draper, 1751) (hereinafter, Sewall, Obituary.)

128. County Court Files, Superior Court of Judicature, 1747-1750, at 194.

129. See County Court Files, Superior Court of Judicature, 1747-50, at 276. See also John Noble, *The Libel Suit of Knowles v. Douglass in the Superior Court of Judicature 1748 and 1749*, 3 COLONIAL SOCIETY OF MASSACHUSETTS, TRANSACTIONS 213 (1898).

130. Samuel Sewall served on the provincial Superior Court from 1692 to 1728, the last ten years as chief justice. See Charles McKirdy, *The State of the Profession*, in LAW IN COLONIAL MASSACHUSETTS, 1630-1800, *supra* note 47, at 329-33.

liarly his own."¹³¹ His wife, Lucy Dudley, died on October 24, 1756, at the age of 72.¹³²

Conclusion

Paul Dudley was a talented man who lived a long life during a period of profound change in America, changes that were in some manner manifested in him. The child of a provincial Stuart courtier, he grew into an independent judge. The partisan Tory, his own adherence to the law led him to rely on the strength of judgments of local jurors rather than strict precedent. The deep Puritan, he traveled widely with careful observations to discover more about the natural world.

Perhaps it is fitting to leave the last word to one of Dudley's colleagues, Stephen Sewall, the nephew of Judge Sewall the diarist, and himself not only a judge on the bench with Dudley since 1739, but also his successor as chief justice. The obituary which Sewall wrote, even accounting for the florid prose of the age, is a moving testament to Dudley's achievements and manner.

As his natural Endowments were uncommon, so he had abundantly furnished his Mind by great Reading and close Study. His Knowledge, so far from being confin'd to the Law was great in most Parts of Literature. He was well versed in Natural Philosophy. . . . He had thoroughly studied Divinity. And in History, both civil and sacred, he had scarce an equal. These were some of the Accomplishments which so well qualified him for public Service, which was the constant Business of his Life. . . .

In all which he acquitted himself with great Fidelity and Honour. But it was in the Seat of Justice he was most generally known and therefore most admir'd. . . . Here it was that he display'd so eminently his admirable Talents, especially his quick Apprehension, his uncommon strength of Memory, and extensive knowledge; and at the same time his great Abhorrence of Vice, together with that impartial Justice which neither respected the Rich nor countenanced a poor

131. Samuel Curwen, *Journal*, July 4, 1775, quoted in Hassam, *supra* note 12, at 38 n.2.

132. Amos Adams, *The Character of a Christian's Life and Death Illustrated: A Sermon upon the Death of Mrs. Lucy Dudley, Relict of the late Honorable Paul Dudley, Esq; Who died October 24, 1756 Aet. 72. Preached at Roxbury, October 31, 1756* (Boston, Edes and Gill, 1756); THE BOSTON NEWS-LETTER, January 13, 1757, advertised the Dudley house for sale.

Man in his Cause. Thus while with pure Hands and an upright Heart he administered Justice in his Circuit through the Province, he gain'd the general Esteem and Veneration of the People. As his Presence always commanded Respect, so it might justly be said of him that he scatter'd Iniquity with his Eyes, which struck with Awe the most daring Offenders. When he spake, it was with such authority and peculiar Energy of Expression, as never fail'd him and his Sentiments of law and Evidence in all Causes before the Court, had generally a determining weight with those who were charged with the Trial of them.¹³³



133. Sewall, Obituary, *supra* note 127.